IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1279 OF 2003

Joseph @ Dilip Fransis Fernandis ...Appellant.
V/s
The State of Maharashtra ...Respondent.

Mr. R.C. Makhija, advocate appointed for the appellant.

Shri D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 16TH OCTOBER, 2004.

ORAL JUDGMENT:

1. Appellant is challenging the Judgment and Order passed by the Additional Sessions Judge for Greater Bombay in Sessions Case No.405 of 2000. The Trial Court by its Judgment and Order was pleased to convict the appellant-accused under section 376(2)(f) read with section 511 of the Indian Penal Code and sentenced him to suffer R.I. for 10 years.

2. Prosecution's case is that the accused had committed rape on his minor daughter who was 7 years old between 19/12/1999 to 21/12/1999. It is the case of the prosecution that the accused also had threatened his daughter while committing the said offence. The Trial Court convicted the appellant on the basis of the evidence adduced by the prosecution.

Against the said Judgment and Order, the appellant has

preferred this appeal.

3. It is submitted by the learned Counsel appearing on behalf of the appellant that the offence of rape has not been established and the medical evidence did not support the prosecution's case that the accused had committed rape on the prosecutrix. It is further submitted that as one of the witnesses was interested in acquiring his land and as he has refused to oblige the builder, he was falsely implicated by the said builder. The learned Counsel appearing on behalf of the appellant has taken me through the evidence on record as also depositions of the witnesses which were recorded by the Trial Court. In her evidence, the prosecutrix - P.W.1 Danial Fernandes has stated that her father used to remove her clothes at night and used to put his private part in her private part and, as a result, she suffered pain in her private part. She has also stated that even while giving bath, he used to rub her private parts with his hands. She, therefore, informed her neighbour Jennie Aunty one evening, who took her to the Police Station and the complaint was lodged. In spite of gruelling cross-examination, her testimony has not been shaken by the defence. P.W. 2 Jennie Fareira has corroborated the testimony of the prosecutrix and has

stated what the prosecutrix has told her before the complaint was filed. The other witness P.W.3 has also stated as to how the accused used to harass the prosecutrix.

4. It is no doubt true that the prosecution has not examined the doctor to prove that the rape was committed or not and only the medical certificate has been produced. From the medical certificate - Exhibit-13 no injuries were found on the private parts of the prosecutrix. Thus, it is difficult to come to the conclusion that the accused had committed rape on the prosecutrix. However, the Chemical Analyser's report - Exhibit-17 tendered by P.W.5 shows that there was human blood on the bed-sheet, shirt as well as the pants. However, the blood group and the clothes of the victim could not be determined. However, there is no reason to discard the testimony of the prosecutrix who has in no uncertain terms has stated that the accused had committed rape on her. Though she was cross-examined at length, her testimony has not been shaken in the cross-examination. Thus, the finding of the Trial Court will have to be confirmed. The other witnesses have also deposed that the accused used to harass the prosecutrix. Thus, there is corroboration to the evidence of the prosecution, so far as the

evidence of ill-treatment is concerned. Conviction is therefore confirmed.

5. The Trial Court has, however, sentenced the accused to suffer R.I. for 10 years. In my view, in the interest of justice, the said sentence should be reduced to 8 years. With the said modification the appeal is partly allowed. The conviction is confirmed. However, sentence is reduced from 10 years to 8 years.

V.M.KANADE, J.